



SEP 10 2001

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In re Application of	:	
SUMMACH, et al.	:	
Application No.: 09/623,847	:	DECISION ON PETITION
PCT No.: PCT/CA99/00073	:	
International Filing Date: 05 February 1999	:	UNDER 37 CFR 1.181
Priority Date: 05 February 1998	:	
Attorney Docket No.: 801-49US	:	
For: MINIMUM TILL SEEDING KNIFE	:	

This decision is in response to applicant's request that the status of abandonment be withdrawn filed in the United States Patent and Trademark Office (USPTO) on 15 June 2001. The request is being treated as a petition under 37 CFR 1.181.

### **BACKGROUND**

On 05 February 1999, applicant filed international application PCT/CA99/00073, which claimed priority of an earlier application filed 05 February 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 12 August 1999. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 05 August 2000.

On 07 September 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a declaration executed by the inventors; an assignment document for recording and a FIRST preliminary amendment.

On 29 September 2000, applicant was mailed a Notification of Abandonment (Form PCT/DO/EO/909) for having failed to pay the basic national fee within thirty months of the priority date.

On 15 June 2001, applicant filed the present petition requesting withdrawal of the holding of abandonment on the premise that the transmittal letter was actually filed on 31 July 2000. Petitioner noted that an original request was made on 07 December 2000 and again on 22 March 2001. Accompanying applicant's request was a declaration by Karen Owen; a Federal Express tracking report; a copy of the law firm's instructions for sending papers to the USPTO; a copy of

the firm's log book for 28 July 2000 and a copy of a canceled check for \$958.00.

### DISCUSSION

Applicants seek revocation of the holding of abandonment mailed 29 September 2000 based on the premise that the papers were in fact filed with the USPTO on 31 July 2000, not 07 September 2000 as stamped on applicants' transmittal letter. Applicants have submitted a declaration executed by Karen Owen, counsel's office manager, in which Ms. Owen declares that the national stage papers for this application, including the check for the basic national fee, were enclosed in Federal Express label number 817390504437. Among the attachments to Ms. Owen's declaration is her contemporaneous record of the mailing, in which the present national stage papers are identified as having been included in this Federal Express package. In addition, applicants have submitted a copy of a Federal Express tracking form which shows that Federal Express label 817390504437 was signed for by a USPTO employee on 31 July 2000. Moreover, the transmittal letter itemizing the documents included in the national stage submission included the Federal Express label number 817390504437. Based on the tracking report, Ms. Owen's declaration, and the attachments thereto, it is concluded that the present national stage application, including the check for the basic national fee, was included in Federal Express label number 817390504437 and that Federal Express label number 817390504437 was received by the USPTO on 31 July 2000. Accordingly, the filing date for these papers will be corrected to 31 July 2000, the date on which Federal Express label number 817390504437 was received at the USPTO.

Because the application and the basic national fee were received on 31 July 2000, prior to the expiration of the thirty month deadline, the Notification Of Abandonment mailed on 29 September 2000, based as it was on applicants' purported failure to meet this deadline, is hereby appropriately vacated.

### CONCLUSION

Applicants' petition under 37 CFR 1.181 to confirm the USPTO's receipt of the present national stage application on 31 July 2000 is GRANTED.

The Notification Of Abandonment mailed on 29 September 2000 is hereby VACATED.

The application has an international filing date of 05 February 1999 under 35 U.S.C. 363 and a date of 31 July 2000 under 35 U.S.C. 371(c).

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision, including mailing of a Notification Of Acceptance Of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).



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